IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos 5854, 5855, 5856, 5859,
5860, 5861, 5862, 5865, 5866, 5867,
5870, and 5872 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

MUKESHKUMAR BABULAL SHAH.

Appearance:

MR BP TANNA for Petitioners

Mr.J.A.Dave for the respondents in First Appeal Nos.5854, 5855, 5859, 5861 and 5865 of 1995.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 24/12/1999

COMMON ORAL JUDGEMENT(Per M.R.Calla,J)

1. All these Appeals were admitted by this Court after condoning the delay on 24.11.99 and the notices were made returnable on 20.12.99. However, the matters came up before the court on 21.12.99 and on that day Mr.J.A.Dave appeared in First Appeals Nos.5854, 5855, 5859, 5861 and 5865 of 1995. It was also submitted that Mr. M.P.Prjapati is appearing for respondents in other seven Appeals, although Mr. Prajapati himself was not present. On the request of Mr.J.A.Dave the matters were directed to be posted for today to be taken up for final hearing.

2. However, it is given out today by Mr.J.A.DAve that Mr. M.P. Prajapti was not appearing for respondents in the seven matters and the respondents in these seven Appeals have not been served. Notices issued by the Court had not returned back.

3. Mr.Tanna has invited our attention to the order dt.13.8.99 passed in Civil Application No.8548 of 1999 in Civil Application No.4483 of 1995 in First Appeal No.5854 of 1995 and identical Application in other Appeals whereby for the reasons stated in that order dt.13.8.99, the Court had passed an order to the following effect:-

"4. For the foregoing reasons, the application succeeds. The copy of the summons to be served on the opponents, shall be affixed in conspicuous place in the Small Cause Court, Ahmedabad, where the Municipal Valuation Appeal No.18595/98 was heard and decided. The copy of the summons shall also be affixed on conspicuous part of the premises of the opponent where the opponent is known to have carried on business. Moreover, as prayed for in the application, an advertisement in Gujarat Samachar, Ahmedabad Edition, shall also be given by the applicant.

5. The Application accordingly stands disposed of with no order as to costs.

(J.M. Panchal,J)

(R.P.Dholakia,J)

Date: 13/8/1999."

4. Mr. Tanna has submitted that thereafter in the Applications notices were sought to be served, as ordered by the Court, and a copy, as was published in the Gujarat Samachar, has also been produced. Besides this, no one had appeared for respondents in the Applications filed in

these Appeals for the purpose of condonation of delay and the delay was condoned on 24.11.99.

5. Therefore, we are faced with the situation as to whether we should still direct the service to be effected on the respondents in the seven Appeals in the same manner and repeat the whole process and ordeal for the purpose of the service of the notices of the Appeals, as was done with regard to the applications for condonation of delay filed in these very Appeals. It is also given out that the question involved is pure question of law and the same is fully covered by a Division Bench decision of this Court in the case of Municipal Corporation of Ahmedabad v. Oriental Insurance, reported in 1994(2) GLR 1498, Paras 63 to 68 and this Judgment of the Division Bench of this Court was later on taken to the Supreme Court and the Supreme Court without interfering with the view taken by this Court dismissed the matters by holding that even the tenants will have a right to file the Appeal. In the present matters we are not concerned with the question of right to appeal by tenants

6. The question involved in these Appeals is covered by a Division Bench judgment of this court, as aforesaid, and that the same was upheld by the Supreme Court, as aforesaid, is not disputed even by Mr.J.A.Dave, who has appeared for the respondents in the five identical Appeals 5854, 5855, 5859, 5861 and 5865 of 1995 of this group of twelve Appeals.

7. In the facts and circumstances of this case, we find that the respondents in seven Appeals are fully aware about the respective Appeals in which they are respondents and they had not appeared when the question of condonation of delay was taken up by this Court through Civil Applications despite service in the manner as ordered by the Court on 13.8.99 and thus no useful purpose can be served by keeping these seven Appeals pending so as to wait for the services of the notices on the respective respondents and we find that it will be plain and simple exercise in futility at this juncture when large number of cases are pending before the Courts and the arrears are piling up. The matters cannot be made to wait simply because a particular party is avoiding the appearance before the court despite full awareness and knowledge that the matter is pending before the Court against them. We find that it may even be a case of abuse of the process of the Court so as to prolong the matter. As and when new problems arise before the court, new solutions are called for and,

therefore, we are of the opinion that it is not necessary in the facts and circumstances of this case to wait for the service of the notices upon the respondents in these seven Appeals as the fate of the seven Appeals out of twelve Appeals is also going to be the same as of the five Appeals in which the respondents have been served and Mr.J.A.Dave has appeared and argued for them. Even otherwise, if we follow the aforesaid decisions and decide these Appeals, on the basis of the decision of the Division Bench as upheld by the Supreme Court, the result would be that the Small Causes Court shall embark upon the exercise of determining the rateable value itself and, therefore, it will be open for the respondents in this group of twelve Appeals including those in seven Appeals to appear before the Small Causes Court and have their say on the question of Rateable value and thus no prejudice is going to be caused to these respondents and therefore, let this technical ground not previal and come in our way of deciding the entire group. We accordingly proceed to take up all the 12 Appeals, as aforesaid.

8. Municipal Valuation Appeals were decided on the same issue by the Small Causes Court No.1 at Ahmedabad being Municipal Valuation Appeals Nos.18595/88, 18595/88, 516/91, 4518/90, 4515/90, 4520/90, 4517/90, 4519/90, 5934/91, 4514/90, 517/91 and 4182/90. The operative part of the order passed in one of such Appeals, namely, Municipal Valuation Appeal No.18595/88 dt.31.1.92 is reproduced as under:-

"ORDER

1. This Appeal is allowed. The gross rateable value fixed by respondent at Rs.7020/- in respect of the appeal premises bearing F.P.No.144/48 T.P.S.3 of Special Property Ward (Resi) is hereby quashed for the period from 25-5-87 to 31-3-89.

2. The special notice no.49 dtd.31.8.87 and municipal tax bill No.48 dtd.28.9.88 are hereby quashed.

3. The respondent is directed to refund the taxes if paid, to the appellant, with 18% interest from the date of deposit within three months.

4. Looking to the facts of the case, there is no order as to costs.

(K.H.Vyas)
Date:31-1-92 Chief Judge."

Identical orders were passed in other Appeals also.

9. All these 12 orders are the subject matter of challenge in these 12 First Appeals.

10. Small Causes Court while allowing the Appeals against the assessment as was made by the concerned Officer of the Municipal Corporation,quashed the Rateable value fixed by the respondent - Corporation in respect of the premises in respective Appeals. Special Notices had also been quashed and the respondent Corporation was directed to refund the tax, if paid, to the respondents with interest from the date of the deposit within three months.

11. The result of such an order is that the assessment is reduced to Zero and the Corporation is not able to recover any amount of the tax, because the financial year had already lapsed and there was no question of any assessment again for the year which had already expired. Such a controversy came up for consideration before the Division Bench in the case of Municipal Corporation of Ahmedabad v. Oriental Insurance (Supra) and the Court found that where an assessee chooses to file a complaint against the proposal to fix or increase the rateable value, even without the issuance of a valid special notice under Rule 15(2), the principle of waiver would apply. The requirement of issuing a notice under Rule 15(2) is to give an opportunity, of filing a complaint, to the assessee. If a complaint is filed then the purpose for which the notice was to be issued, is fulfilled. In such a case, even if no notice is issued or the notice, which is issued, suffers from any defect, the principle of waiver would apply and an assessee, in appeal before the Small Causes Court, or even thereafter, cannot be allowed to contend that non-compliance with the provisions of Rule 15(2) must result in the assessment being regarded as a nullity. But where the principle of waiver does not apply and a notice under Rule 15(2) is not issued and an assessment is made, then after coming to the conclusion that the assessment is a nullity, the court considered the question that can the Small Causes Court quash the assessment simpliciter or does it have a duty or jurisdiction to take further action in the matter? The Division Bench of this Court, following the earlier decision in the case of Anant Mills Co. Ltd. v. Municipal Corporation, Ahmedabad, reported in 1993(2) GLH 897, held that it was in agreement with the observations made in Anant Mills's case (Supra) and following the ratio of the decision in Anant Mills' case (Supra), the Division Bench found that even if the assessment is held

to be not in accordance with law, whether because of the wrong method followed with regard to determining the rateable value or because of any irregularity or illegality in procedure or because of violation of the principles of natural justice or because notice under Rule 15(2) had not been issued, then the Small Causes Court would itself have the jurisdiction to examine evidence and determine the correct rateable value. It would be wholly inappropriate for the Small Causes Court to merely quash the assessment, which would have the effect that for the official years in question, the entire tax would be lost to the Corporation. In effect, the ratio decidendi of the decision in Anant Mills' case (Supra) is that the Small Causes Court exercises the same power and will have the same jurisdiction, which is exercised by the Commissioner for the purposes of determining what should be the correct rateable value.

12. Mr. Tanna has submitted that the aforesaid judgment rendered by the Division Bench was challenged before the Supreme Court. The Supreme Court decided the entire group of Appeals including the Appeal against the aforesaid judgment by its common judgment and order dt.9.5.95 i.e. Assistant General Manager, Central Bank of India v. Commissioner, Municipal Corporation for the City of Ahmedabad, reported in (1995) 4 SCC 696. Paras 39 and 40 of this judgment are reproduced as under:-

"39. We must deal with one another contention urged by Shri Rohinton Nariman. He submitted that the special notice issued in his case under Rule 15(2) of Chapter VIII of Schedule A is totally devoid of any particular or grounds upon which the assessment was sought to be enhanced. He relies upon the general proposition that a show-cause notice must contain the relevant particulars and grounds sufficient to put the person concerned on notice of the proposed action and its basis. Absence of such particulars and grounds in such show-cause notice, he submits, vitiates the special notice itself. The High Court has rejected the contention in the following words:

'Notice under Section 15(2) is issued after entry in the assessment book has been made. Sub-rule (2) of Rule 15 requires that the special written notice to the owner or the occupier shall specify the nature of such entry. In other words, the special notice must inform the owner about the entries mentioned in rule 9, clauses

(a), (b), (c) and (d), because the said Rule 15 has to be read with Rules 9 and 13. When a statute specified as to what should be the contents of a notice, and that is so specified in Rule 15(2), the general principles enunciated by the aforesaid decisions and of the other High Courts would not be applicable. For the purposes of giving an opportunity to an owner or an occupier to file a complaint, all that has to be informed is what the Commissioner has entered in the assessment book. One of the items, which is entered, is the rateable value. The Commissioner is under no obligation to inform as to how the ratebale value, which is entered in the assessment book, has been arrived at. It is for the owner to complain if he finds the rateable value to be high. The principles for fixation of rateable value are well known. Ordinarily, a rateable value will be arrived at after particulars had been given by the owners or occupiers under Rule 8 of the said Rules. On the receipt of the notice, it will be for the complainant to lead evidence and prove as to what should be correct rateable value. A hearing is contemplated by Rule 18 and if the assessee requires any classification with regard to the entry made in the assessment book, we see no reason as to why this classification would not, ordinarily, be given. Be that as it may, Rule 15(2) does not require the giving of any particular in addition to what is stated therein. The aforesaid decisions of various courts therefore, can be of no assistance to the respondents.'

40. We agree with and affirm the reasoning of the High Court and accordingly reject the contention."

The Supreme Court allowed the Appeals only in part and had disagreed with the High Court only on the question of maintainability of the Appeals by the tenant and according to the Supreme Court, the Appeals filed by the tenants were found to be maintainable provided the Appeals are filed in accordance with and complying with the conditions prescribed in Sections 406 and 407 of the Municipal Corporations Act and insofar as the meaning and effect of proviso (aa) to the definition of "Annual Letting Value" in Section 2(1-A) is concerned, it shall be given effect to and followed as explained in the judgment.

13. It is, therefor, clear that the orders, as had been passed by the Small Causes Court, which are subject matter of challenge in these Appeals, cannot be said to have been passed in accordance with law.Even if the Small Causes Court had come to the conclusion that the Gross Rateable Value had been wrongly fixed and the assessment was not correct, it was the duty of the Small Causes Court itself to consider the material and evidence available on record and find as to what should be the correct Ratebale Value for the purpose of the payment of the due amount of tax to the Municipality. The Small Causes Court cannot create a situation, wherein the assessment is reduced to Zero and the assessee is let scot free from paying any tax to the Municipal Corporation in respect of the year for which the assessment is found to be illegal by the Small Causes Court, as has been held by the Division Bench of this Court in the aforesaid decision in Municipal Corporation of Ahmedabad v. Oriental Fire & General Insurance Co.Ltd (Supra). The Small Causes Court was under an obligation to take up such an exercise for determination of the rateable value in accordance with law on the basis of the material and evidence available before it since the powers are co-extensive with the Assessing Authority under the Act.

14. The impugned orders challenged in these 12 First Appeals cannot be sustained in the eye of law. The same are hereby quashed and set aside. The matters are remanded back to the concerned Small Causes Court for the purpose of taking up the exercise of determining the Rateable Value in accordance with law after notice and hearing to the parties in accordance with law. All these 12 First Appeals succeed and the same are hereby allowed. In the facts and circumstances of these cases, no order as to costs.

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